Statutes of
Connecticut

Of Practice in Connecticut

But first, (as introductory,)

Of the Jurisdiction of our C[o]s of Law in civil causes.

1. Single Magistrates, as Justices of the Peace, &c have original cognizance of all civil causes, in which the title of land is not concerned, if the matter in demand does not exceed 15 dollars; & of all actions on note or bond, given for money only and vouched by two witnesses where the demand does not exceed 23 dollars. (St C 26 1 Sw 107 St 202.

But an appeal lies to the next C. Ct if the Sum demanded exceeds 7 doll[rs] except in actions on note &c for money &c at sup[r] Ct in such cases no appeal. St C. 26 1 Sw 107 R L 393

But an arbitration note for more than 15 dollars, and not exceeding 35, tho' vouched, at sup.^{a}, is not cognizable by a single magistrate. It is not for money only, but substantially an oblig.^{n} to abide the award (1 Jur. 108. 1 Root 99. 126.) if for more than 7 doll.^{s} appeal must lie, I suppose.

Whether a note &c for more than 35 doll.^{s}, but indorsed down below that sum, it being for money only & vouched at sup.^{a}, is within his jurisdiction Quaere. Decisions & Practice both ways. (Payne vs Payne, My M.S. 9. 1 Jur 108. 3 Wils 48 9. 1. N.Y. Term R. 66.

Post

In analogy to the rule in case of appeals from C. C.^{s} (Post 2.) it would seem, that a note &c for more than 15 doll.^{s} and not exceeding 35. tho' for money only & vouched at sup.^{a} is not within his jurisd.^{n} if either witness is dead or becomes interested — as by marrying one of the parties. — 1 Jur 108. 1 Root 225. 316. See Kirb 38?

Qui tam pros^ns (i.e. by forthwith process) are appealable by deft. (Semb.) however small the dam^s. demanded are — of a crim^l nature. 2 Root 526. St C. 142.

If in action of trespass brot before a justice &c for an injury to lands, deft. pleads title; justice cannot try the cause. Deft recogn^d with one or more sureties, in a sum, not exceeding 67 doll^s. to "pursue his plea" at the next C. Ct. in the Cy in wh. the land lies, & to "satisfy all dam^s" &c. (St 425 6.) See the St. that deft. shall "bring forward a suit &c.")

The Justice must then certify the whole record to the Cy Ct. (St. C. 425 6. 1 Sw. 108. Kirby 362. 2 Root. 54. 359.

Deft. cannot in this ca. alter his plea in C. Ct. (1 Root 344-5. 458. (No. 1.) ~~con~~ [illegible]

If he does not pursue his plea in C Ct. "the default shall be recorded" & scire fa. issues from the C. Ct. on his recogn^e. (St 426.

If he does pursue his plea, & fails to prove his title; judgm^t goes agt him for treble damages & costs. St. 426 2 Root. 361.

If he refuses to be thus recogn^d before the Justice "his plea shall abate" & on proof of the trespass judgm^t must be ag^st him. St. 426.

If defft in such action, pleads the gen^l issue, & takes upon his title in ead^m; the Justice may determine the cause, as in other cases. (1 Root. 410. 435. 549. & 2 Root. 440.

In actions Court for obstructing, or raising the water of a river to be brot before a Justice, defft pleads a right to do the act; appeal lies to C. Ct & thence to Supr^m Ct 1 Sw. 108. St. C. 30.

Duty of 50 cents to be pd on every appeal from a Justice (St. 149. It must be paid at the time of taking the appeal (2 Root. 11. 12.) Subsequent payment not sufft (Ib.) Nor can the record of the Justice be contradicted to prove the fact (Semb. not St. C. 150. ff.)

A Justice may take a confession of judgm^t for a debt (with or without Cost) to the am^t of 70 dollrs to be taken only from the debtor in person. Record is made of the confession, & ex^on may issue. Record must express the particulars debt or duty, eg. on bill, note, book &c. St. C. 248. In this case costs are allowed only for the Justice's fee. unless there was an antecedent process; & this must appear by the record. (1 Sw. 108. Kirb. 152. 236. & 1 Root. 2 Root.

Not so of an arbitr^n note (1 Sw 109) i.e. before the award. (1 Root 328. 9. 2 Root. 443.

May administer the oath, prescribed by the St. to poor debtors. (St C. 221 1 Sw 109.

If in an action before a Justice, a recog^e is taken for more than 15 doll^s; & the orig^l judgm^t exceeds that sum a sci. fa will not lie upon it before the Justice, but debt before the Co. C^t. (R. Sw. 393) Indeed no action lies upon it before the Justice (2a. Will not sci. fa. lie before the Justice 6 St 39. & indeed in all cases to enforce his own judgm^t except ag^t garnishee; where the sum demanded exceeds $15. (St C. 470.)

Note: A sci. fa. is a judicial writ issuing regularly from a C^t in wh^h a judgm^t has been rendered, for the purpose of carrying the judgm^t into effect. Ex. gr. ag^st ex^rs garnishees special bail &c. (Kirb. 220.) Tho' it lies in some cases pending a suit, & before judgm^t. See St. of "abatem^t & amendm^t."

It issues, therefore, only from that C^t by wh^h the judgm^t was rend^d, or in wh^h the orig^l suit is depending, (Kirb. 220.) & regularly, only from that C^t to wh^h it is returnable, exception, in case of sci. fa. ag^st garnishee for more than $15 on a judgment rend^d by a Justice. In this case it is signed & issued by the Justice; but returnable to C. C^t. (St C. 470).

If a Justice &c has jurisd. and judgt in any cause, dies or is removed, before exn granted or Judgt satisfied; debt lies on the Judgt — and if the debt or damages does not exceed 35 dolls the action may be brot before another Justice, &c. & no appeal; if it exceeds that sum before the C. Ct But it must be brot within 3 years from the death or removal. St. C. 29. N. L. 398.

A Justice cannot try a cause out of the town, in wch he dwells; except where there is no Justice in the town, & wch the cause is to be tried, who is qualified to determine it. 1 Bac. Abg. 1 Root 202. 300. 313. St C. 26 & 36. Cases in crim. cases. 2 Root 357. St C. 112.

But the Govr Lt Govr — assistants — and Judges of the Supreme Court may respectively execute the office of Justice throughout the State. But when acting as single magistrates, they have no other judicial powers than Justices. Guided by the same, as to Judgt matter St C. 241.

Appeals from Justices must be entered in the docket of C.C.P. before the second opening. May appellee enter, if appellant fails, as in Sup.r Ct.s Pat. 2. 2. Such is the practice (Clerk Wolcott.

II The General Courts of Common Pleas or C.P.s have orig.l Jurisd.n of all civil causes (at law) not cognizable by a Single magistrate. So that all civil actions, not thus cognizable, are regularly commenced before these Cts. (1 Sw. 101 Ts. L. 392 D. C. 28.

Of all civil actions, except on Bond or note (infra) in wch the title of land is not in question and of the matter in demand surmounts exceeds the value of 15 dolls but does not exceed the value of 70 dolls and of all actions on Bond or note, given for money only and vouched by two witnesses of the sum in demand exceeds 35 dolls. they have final, as well as orig.l juris.n except that their Judgm.ts may be reviewed on writ of Error. 1 Sw. 101 D. C. 28. 127 129. Kirb. 280. 1 Root 297

But an appeal to Sup.e C.t lies from their judgm.t regularly in all cases, in wh.h the title of land is in question. 2 Root. 440. – and in all cases in wh.h the value of the matter in dispute exceeds the value of 70 dolls; except in actions on note.s at law given for money only, and vouched by two witnesses. St 28. 127. 129. 1 Sw. 95. – 1 Root. 148.

In an action for trespass on land demanding not more than 70 doll.s no appeal lies, unless title be pleaded+ (2 Root 440.) Ev.e of title under the gen.l issue not suff.t

+ Mitchell v. Con. Rep. 2, 3. 79.

But it has been decided; that the right of appeal does not depend upon the sum demanded, as damages, except where the dam.s are presumptive; as in cases of tort. (1 Sw. 95. H. Sr. 393.) & where in case of cont.t the dam.s cannot be ascertained, without introducing ev.e extrinsic. 1 Root 148. 518.

The rule is that if it appears from the record, that acc.g to the rules for ascertaining dam.s judgm.t cannot be rendered for a greater sum than 70 dolls the title of land not being in question no appeal lies. If granted it will abate; or the judgm.t rend.d in Sup.r C.t in such a case may be arrested. 1 Root. 525. Ex. Pl.ff in book-debt: pl.ff avers that def.t owes 70 doll.s & demands 80. So, on a note or bond for 20 dolls or so. (1 Sw. 95. 96.

Kirb 280. 1 Root 302. 127 238. 276. 518. Such a case dismissed by the Ct ex officio 1 Root. 325. 2 Root. 370 377 Kirb. 38. 2 Root. 137 412.

So, tho' Plff. in Crock debt declares on a debt of more than 20 dolls, and demands more; yet if it appears from his own Book on oyer, that no more is due, def[t] by pleading it on the record in his abs[e] to the appeal in Co. Ct may prevent an appeal. 1 Root. 518. 1 Sw. 96. Kirb 278.

In action on arbitr[n] note for more than 20 doll[s] if it appears from the record, that neither the matter in controversy, nor the award, exceeded 20 doll[s]; no appeal lies. (1 Root 127 238. 1 Sw. 95 6.) tho' if the note is for more than 20 doll[s]; the case is prima facie appealable.

In an action on note or bond for more than 20 doll[s] given for money only, & vouched by two witnesses, if one is dead or becomes interested, an appeal lies to Ct. 1 Root 232 316 Kirb 387 cor. 1 Sw. 96. 1 Root. 566.

In an action, upon a receipt, agst an officer for not executing an exn no appeal lies, whatever the sum demanded is. St. 385. 1 Sw. 101. Root 153. Secus if it is for not executing, mesne process) except when action is brought before a Justice &c for not executing &c an exn or a ~~judicial~~ judgmt confessed before him, for more than 7 dolls. St. 386.

So in action on a rect by an offr, agst a receiptsman of persl. propy taken in exn. St 386-7. 1 Sw. 101. Secus, if taken & receipted upon attachmt. (Kirb. 40.

So, on a judgmt rendd upon an award of auditors St. 97. 1 Sw. 97.

If a cause is not appealable, by the St. no agrt of the parties in the Ct appd to, can make it so: Ex. Agrt to increase the demand by amendmt. (2 Root. Co. 377-8.

No appeal lies from a judgmt by default, unless there was a hearing in damgs, defdt not otherwise supposed to be in Ct. 1 Sw. 96. Kirb. 17. 1 Root 566. and in that case he can be heard, in the Court appealed, to only as to the damgs. Root. 566. (No 9. 4. Jost.) Jost.

But on judgmt upon nil dicit, appeal lies. Defdt in Court. (1 Sw. 96. 1 Root. 109. & the defdt may plead & defend in the Ct to wh. &c. 1 Root. 566.

No appeal lies from C. Ct in a qui tam prosn for a crime. It is in form, & partly in effect a criminal proceedg. 1 Sw. 96. 1 Root. 403 Kirb. 269. R. L. 405.

No appeal lies to an adjourned Ct. (Kirb 366. 1 Sw. 96.
" Next Sup^r Ct^s " (1 St. 28.

Appeal may be taken from a Judgm^t on a plea in abatem^t without waiting for Judgm^t in chief. But if def^t appeals from such Judgm^t & does not "make good his plea" in the Ct app^d to, costs shall be awarded agst him, on the Judgm^t on the plea in abatem^t & execution issue, tho' he shd prevail on the merits. (1 St. C. 22. 2 Sw 269. 2 Ld. 392. 1 Root. 564.) & he cannot alter the Ct above 1 Root. 564.

The appeal must be taken during that term, in wh Judgm^t is rendered. (1 Sw. 96. 1 St. 28.) It may be taken at any time during the term; but if practicable to move for it immediately after verd^t, or on an issue to the Court after Judgm^t secy, ex^n may issue. If a Judicy^l appeal, it is s^d is no supersedeas. 2 Ld. 390.)

Appeals to Sup^r Ct must be entered in the docket before the Second opening of the Ct. or the appellant must advance the whole costs to the time of entering, and he cannot enter at all, after the Jury are dismissed. 1 Sw. 96. 1 St. C. 28.

An appeal destroys the Judgm^t appealed from unless the Ct app^d to, wards grant^s it. Even then, a Supers. the Judgm^t is superseded, till the appeal is granted above. 2 Ld. 392.

But if appellant does not enter before the Jury are dismissed, the appellee may enter afterwards, & have the Judgt affirmed with additional costs. (S. 28 1 Rev. 96 ?) as he may sue on the bond (post) the Judgt recd in the Court above, as a distinct, subsistance Judgt except in case of appellee's entering.

Duty of one dollar payable on every appeal from C. Ct (S 119. 1 Root. 470. 2 Root 11. Kirb. 51.) If not certified, the appeal is void. Kirb 51.

It must be paid at the time of taking the appeal or the appeal will abate. 2 Root 11-12. So that the record of the Ct be contradicted to prove the fact? Semble not. (S. C. 130

It has been decided that an and? question is within the St as to appeals, and of course appealable from C'ty to Sup? Ct. 1 Root 56.

Either party may appeal; if plff recovers any thing less than his whole demand. — Seems where the Judgt is altogether in his favor. He cannot (1 Root 318 Kirb. 2 Root 370 — But, both may appeal & if either enters it is Jaff?

If appeal is denied, when it ought to be allowed, error lies. (1 Root 518. 56.) So if allowed, and the Ct. above does not quash it. (2 Root 377.) Qu. Will error lie immediately on the allowance of the appeal? I should think not; as advg. may be taken in the Ct. appd to.

If a cause is not appealable, & motion for an appeal is made; objn. may be made to the motion, in the Ct. in which &c. 1 Root. 518 or the appeal may be abated, in the Ct to which &c. Kirb. 278. Root 202. 127.) or if a verdict is given agst him in the latter, judgmt. may be arrested. (1 Root. 525.) or the cause dismissed by the Court ex officio. 1 Root, 325. or writ of Error lies, if judgmt. is agst him in the Ct above.

(For the Equitable Jurisdn. of Cty. Cts See Powers of Cts.)

The time allowed for pleading in abatemt. of an Appeal is the same (semb.) as is allowed for ordinary pleas in abatemt. post. (1 Root. 526. 564.) Explain which Appeals.

III.dly The Superior Court has no origl. jurisdn. in civil causes, properly so called. (St. 127 8. 1 Sw. 94 5. It has, indeed, origl. jurisdn. when a suit is brot agst. an officer upon the St.; (but this is not properly a civil suit No 4. 4. 6. 3.) For not executing a writ returnable to or an exn. issued by itself. (1 D. C. 385 1 Sw. 97. 2 Root 231. Action may be brot at Com Law to C. Ct., & this is the usual practice. 1 Root. 90. — Sw.

ante

This Court indeed issues writs of Sci. fa. return able to itself; to enforce its own judgm^ts; but this is a judicial not an orig.^l writ (ante 1.2) and it generally grows out of the appellate jurisd^n of the C^t. St C. 28. 1 Sw. 97

It has appellate jurisd^n of many causes, determined in the C^y. C^ts (explained ante Div^n II) Its appellate jurisd^n of causes decided by city courts is generally the same, as of those decided by C^y C^ts. (See the St^s

And an appeal lies to this C^t from every sentence order or decree of the Courts of Probate. 1 Sw. 97 St. C. 133-4 (For its Equitable Jurisd^n see "Powers of C^ts")

It has jurisd^n of all writs of Error brot for the reversal of judgm^ts rendered by C^y C^ts or single magistrates in civil & criminal cases or of decrees in Eq^y. passed by C^y C^ts. (St C. 161 2. 1 Sw. 97

When, on reversal pl^ff would enter his action in S. C^t for trial, he must do it, in that term, in wh^h the judgm^t of reversal is rendered. (1 Root 35.

Its Jurisd^n in case of Divorce, Mandamus, Prohibition & Habeas Corpus are treated of under their respective titles. St C. 347

Note. A party may appeal from a Judgt or a plea in abatemt. Where an appeal is by Law allowed without proceeding to Final Judgt in the Ct below. And if a defts after Judgt of respond. ouster pleads to the action, instead of appealing, he cannot upon appeal, from Final Judgt take any advo in the Ct appealed to, of his plea in Abatement. Usage

IV.thly The Superior Court of Errors has jurisdn (in all respects Final) of all writs of Error, brot for the reversal of any Judgt or decree of the Supr Cts in matters of Law or Equity, where the error complained of is apparent in the record but has no recogn of errors in fact. 1 C. 126.

V thly The General Assembly has cognizance by petition of cases in which no other Ct can grant relief provided that the matter in demand exceeds £25

Of the proceedings by wh. civil rights are enforced in our Courts of Justice.

An action or suit is defined to be the "lawful demand of one's right." 3 Bl. 116.

The first stage of a suit in Conn. is the Writ and Declar^n wh. issue together. 2 Sw. 188. St. C. 24.

The Writ. I. The Writ consists of all that precedes the statem^t of the plff's claim; of the signature, the certificate of a duty paid & the recogniz^e where there is one. The date is common to the Writ & Declar^n. 2 Sw. 188.

The process contained in our Writs is of two kinds: 1. By summons. 2 By Attachm^t. St C. 24. 2 Sw. 188. post. 5.1.

post By process is meant the means of compelling the def^t to appear in Court; or in C. of holding him to trial. 3 Bl. 279. 2 Sw. 188. In C. as the declar^n issues with the writ; it is not necess^y to entitle the plff to judgm^t that def^t should appear (secus in Eng^d. 7 J.R. 6.) 2 Sw. 193. By St 12 Geo. I. a comm^n appearance may be enter^d; i.e. comm^n bail filed for def^t by plff. Tidd. 125. (No 8.3. 9.3.

post This process contained in the orig^l writ is called orig^l or mesne process as contradistinguished from final or process of ex^n. (3 Bl. 279.

In Engd. there is a process distinct from the origl. writ. 3 Bl 273. 279. 280.) when the writ is a praecipe; Secus, when a si fecerit te securum. 3 Bl 274. & App. VIII and XIII. In Engd. a writ agst. 2. & declarn. agst. one only, is regular in case of tort. (Vos & Pul. 19. 49. — The Writ.

The writ must be signed by a Magistrate, as a Justice Assistant &c or by the Clerk of the Ct. to wh. it is returnable; and must describe the Ct. to whh &c. & the time and place of its session. (St C. 24. 2 Sw. 187. A Sci. fa agst. garnishee on a judgmt. rend. by a single magistrate must be signed by him, even when return-able to the C. Ct. (St C. 470.

It commands the officer or person to whom directed, to summon (i.e. to give notice to) deft. to appear; or to attach his este. or person, & have him to appear before the Court &c. (St. 24. 212 &c. 2 Sw. 187.

It is, regularly, directed: to the Sheff of the Cy. in wh. the deft. dwells, his deputy, or either constable of the town in whh &c. (St 24 2 Sw. 187 St. 383-4. Constables have in genl. the same powers, within their respective towns, as Sheffs in their Counties. (St C. 384. 1 Root. 407. A Constable, chosen & sworn in one year & afterds. rechosen, may serve process before he is sworn a second time. (1 Root. 83-4. 1 Stra. 625.

The Writ. — It may be directed to the Sheff only, or a constable only.

And a writ directed to the Sheff may be served by his deputy, tho' not named — even a special deputy. Kirb 240 Cowp 403. 1 Bl. 116 339. Sal 12 9s 6. Holt 221. Hob 12. 13. Bl R. 337 So. in England.

Ordinarily, the writ can be directed to no other, than one of the above officers.
By new St. (1804.) no writ may be directed to an indiff.t person, unless there are two or more defts. described of diff.t counties — except where in case of attachment. Plff or his agent or atty. shall make affidavit that he verily believes plff is in danger of losing &c unless &c (St. 674) affidavit indorsed on the writ. 1 Ib.

The indiff.t person need not make oath to the truth of his return. 1 Root 284-5. Serv of a special deputy — Sheff. St C. 386.

That the indiff^t. person is bondsman for pros^r. The Writ does not disqualify him. So, as to Shff & constables. 1 Root. 228.

The certificate of the magistrate, as to the necessity of directing, to an indiff^t. person, is conclusive. 1 Root 284-5. Kirb. 6. 2 Sw. 188.

Holden once by Sup^r. C^t. that a direction to the Shff. or an indiff^t. person was ill; but, that a direction to the Shff and an indiff^t. person w^d. be good. 1 Root 285.
Qu. as to the last branch.

If the return of a writ directed to an indiff^t. person, is altered from one term, or time, to another, the writ will abate. The necessity might exist at one time, & not at another. 1 Root 2 Root. 369.

The Writ

A writ agst a town may be directed to an inhabitant of the town, as an indiffᵗ person. 2 Sm 188.

A writ directed to a minor, as an indiffᵗ person, will abate (2 Root, 519

A constable having begun Service within the Limits of his town (as by attaching goods) may go into another to complete it — as to serve a copy. (Blake vs Ransay C Ctᵗ Post, "Service." See Root 407 A writ agst a defᵗ of the town of A. may be directed to a constable of the town of B. — & if he makes Service in the town of B it is good. But he cannot serve it in the town of A. (1 Root. 407

All writs, or declarations by Sheriffs, their deputies, or constables, except in their own suits, "shall abate" St C 285

A Sheriff or deputy, I conceive, cannot serve a writ for or upon, the Sheriff. Service must be made for the Sheriff by another. But a deputy may clearly, I conceive, serve a writ for or upon another. So Sheriff may serve for or upon his deputy (Beebe vs Wells Com Ct Sept 1803. (at Post

Post.

Writs must be signed by a magistrate as Justice the Writ &c. or Clerk of the Court &c. (at ante)

But a Justice can issue orig.l civil process only throughout the County in wh.h he dwells. 2 Sw. 187. St. C. 247.

By new St 1804. he may issue into an adjoining county, such process, if returnable into his own County. Does not so, of subpoenas in civil cases. St. 673.

He may issue crim.l process to bring a delinquent before himself, & process of ex.n in civil cases, throughout the State. So he may issue a summons or capias for witnesses in the first case through the State. St. C. 247. 175. Kirb. 182.

A Justice may ~~issue~~ sign a writ in favor of the town in wh.h he lives & on course (I suppose) ag.t it. 2 Sw. 187–8. 1 Root. 175.

The Writ.

Clerks of the County & Sup^r Ct^s can sign writs, returnable to their respective Courts but no other
St^e 24 1 Sw. 100. Acc^d to usage writs of Error must be signed by a Judge of the Court to which it is returnable 2 Sw. 272 / not to be issued, without probable ground for error. Ib.

Formerly the Clerk of the Sup^r Ct could issue mesne process, returnable to the Sup^r Ct in any part of the State. Qu. Now, since there is a Clerk in each County?
But the Clerks of both the Sup^r Ct & Cir^t Cts may clearly issue process, returnable to their respective Cts
N.C. 24, 129 131. throughout their respective Counties

They may also (Sup^r Ct) issue mesne crim^l process, returnable to their respective Cts to any part of the State; i.e. in term-time, under the order of the Ct

Formerly Judges of the C^t. C^ts. & Justices of the Quorum, could not issue orig^l civil process out of their respective Counties. Afterwards enabled by St^e to issue such process into any part of the State, if returnable to their own Courts. 2 Sw. 182. St C. 247. The Writ.

Now, by a late St they are authorized to "issue process in all civil matters" to be served in any part of the State: whether returnable to their own or any other, Ct. (St C. 499.

The Gov^r L^t. Gov^r, Judges of Sup^r. Ct. Assistants (and now Judges & Justices of C^t. C^ts. ut sup^a. can in all civil cases issue mesne as well as final process, that will run thro' the State. (St. C. 247. 499.

The Writ describes the place in wh^h the def^t. dwells so that in wh^h plff dwells. These in ordinary cases are the only necessary additions. St C. 212. &c 2 Sw. 187. but where the office or civil character of the def^t. or plff is the inducement to the action that must be added. Eg. Ex^r. &c — Sheriffs &c. See "Pleading".

The Writ. — On all writs, in civil cases there must be paid a duty at the time of their issuing. If returnable before a single magistrate 17 cents. C.P. Ct. 34. Sup. Ct. one dollar. S. Ct. of Errors. 2 dolls. On petitions of an adversary nature to the Gen. Assembly. two dollars.

Payment of the duty must be certified on the writ in words at full length, by the magistrate signing. St. 4th.150. Otherwise void. & the cause may be erased from the docket, without a plea. 1 Root. 395. 415.

The Writ cannot be amended, by inserting the certificate, even tho the plff. offers to pay the duty in Court. 1 Root 505.

And a writ once filled up against one person, cannot be converted into a writ agst another, unless there is a further certificate of the payment of a second duty. If it is, the Court may ex off. dismiss it & tax costs for deft. (St. 150.

The same duties are payable on qui tam prose- —The Writ.—
cutions. (2 Root 526.) Not on public prosns (ex:) by
informing officers &c — Decided by Supr. Ct.
that plff. may take adv. of the want of a certificate
of duty paid by writ of Error after judgmt for
deft. Aug st. 1804. Litchf. Co.

On every writ of attachmt the plff. "must give suffi.
"security to prosecute his action to effect" & "to answer
"all damo in case he make not his plea good". St. 24.
1 Root. 563. The security is to be taken to the adverse
party. (St. C. 28.) as all bonds for prosn are. (N.
Kirb. 378.

This security is called a bond for prosn & is given
by way of recogizn acknowledged before the magis-
trate signing the writ, & at the time of its issuing.
St. C. 24. 1 Root. 563.

In Engd security may be required of foreign plffs.
not residing there — but, of no others. (1 Bos. &c, 96.
2 H. Bl. 383. 384. n. b.

The Writ =

Q. Is the recogiz.^n intended as a security for the prop.^y attached & for any dam.^e occasioned by the attachment? or only for the costs? not decided. I believe to be a security for costs only. Post. For costs it certainly is a security.

But it has been decided, that plffs. recogniz.^e is suff.^t if he is of ability to pay costs &c. C.^t Fairfield C.^y Aug.^st 98. & the com.^on practice is to receive his recogn.^e This decision was founded on usage (Root. 166.). And the C.^t held, that the recogn.^e was a security for costs only.

If however, the object of the bond is to secure costs; this practice is useless. For the plff is liable for costs without it. And if the object is to furnish a security for the prop.^y attached; the provision of the St. is defeated.

The latter I conceive, was the object of the St. (Ford Luane) If, however plffs security is insuff.^t a new bond may be ordered on motion to the Court to wh. the writ is return.^d 1 Root. 166.

The Writ.

Lately decided, that a bond for pros.^n on a blank writ, was not good, & that the writ must abate. Because it could not be taken to the adverse party. (S. C^t. New London C^y.

According to usage bond for pros.^n must be taken on all qui tam pros.^ns by foolhardt process — as the def.^ts body is attached (or arrested.

Scus, where a qui tam, civil action is brot by process of summons. Here the rule is the same, as in other cases of summons. —

Bond for pros.^n must be given, "by some substantial inhabitant of this State" in every case in wh^h a writ issues in favor of ones who is not an inhabitant of this State. St. C. 24. even tho the process is by summons.

If the bond is not given in the above cases the writ may be abated.

The Writ

So bond for pros.ⁿ is to be given by some substantial inhabitant &c. on the issuing of any writ, if it appears to the author.ʸ signing, that the plff tho' an inhabitant is unable to respond the costs; that may be recovered. St. 24.

But in the last case, I conceive, the writ cannot be abated in the Court to wh. it is returned, for want of a bond. For the signature, I suppose is conclusive evi. that the fact of the plff's inability to pay costs did not appear to the Magistrate.

But, in this case the plff is, on motion by def.ᵗ & proof of his inability in the Court to wh. the writ is returned, compellable to give bond for pros.ⁿ with suff.ᵗ surety, or to be non suited. So if his inability accrues after the writ issued. (St. C. 29.

But such motion should be made in a reasonable time, if possible. Motion after the Jury was impannelled to try the cause, decided to be too late. Kirb. 344. The Writ.

If the Security taken is apparently sufft. at the time, the magistrate is not responsible, on its proving insufft. as if the Coadjutor Jacks. (1 Hawk 168.) & this rule holds even tho' Plff's sole bond is taken. (Ib.

So, on writ of rebellion, if the Security is apparently sufft. (at Sept.) he is not liable. Except when Plff's Cap. is take — in this case if Plff is not eventually of ability to pay; the magistrate is, at all events, liable. This can only be apparently sufft. For it takes the cattle & security away, i.e. the property attached, & away with as if nothing had been attached. (1 Hawk. 165. 168. 56. 261.) St. Ch. 360 requires "Security to prosecute &c. and to satisfy & answer Such dam.s demands & dues" &c.

The Writ.

On every writ of Error bond with Surety must be given, that Pltff shall prosecute &c. and answer &c. St. C. 162. R.L. 110. III. Pltff's bond not gen.

Every party appealing from the Judgm. of one Ct to another, must give bond for pros. with Surety appellant's bond not Pltff. (St 28. 30.) formerly not required on appeals from a Justice. 1 Root. 208.

The appellant & surety are bound that the pros. shall prosecute the appeal to effect. By this is not meant, that unless appellant proceeds, the bond is forfeited but that if he does not proceed in the appeal. For the appeal destroys the Judgm. (R.L. 390

If appellant does prosecute his appeal and Surety, the Surety is liable for costs, if they are not paid by the appellant & for all the costs before & after the appeal. R.L. 390 2 Sw. 173. that bond man on appeal by Defdt is liable only for the costs subsequent to the appeal &c

But he is liable for costs only (& not for them the writ if collectable from the ~~dependant~~ appellant). Is it necess^y for appellee to take out ex^n & have a non est returned as to appellants personal prop^y. 6 Jo. R. 399. Qu. Said (1 Root 315) that non est inven. is not necess^y to subject bondsman for pltff's costs. Qu. — Then sci. fa. will lie on the recognizance or debt, I suppose. Holden (1 Root 315) that the return of non est is not necess^y to subject pltff's bondsman on an appeal. (Qu.

The proceeding is the same in the other cases of bonds to prosecute (ante) On non est as to the principals pers^l prop^y the surety is liable. R L 390.) The imprisonm^t of the principal on the ex^n will not discharge the bondsman (1 Root 85-6.) Indeed, nothing but paym^t of the costs discharges him. (Ib.

The Writ.
post.

The giving of special bail, does not exonerate the orig. bondsman, on appeal (post) Nor does the bond on appeal, when plff. appeals discharge the bondsman for pros.ⁿ on the orig.ˡ process. — Bondsman for plff on appeal is liable for costs, if deft prevails, tho' plff. dies before the return of the exⁿ. 1 Root. 214. So, I suppose, e converso, if deft appeals & dies, at supra) when plff prevails.

post

Bonds for prosⁿ not within the Stat. Limitaⁿ as to bail. See post Bail 1 St. C. 39. 1 Root. 56. 366. 2 Su. 175. (post. p.
Death of the plff. before judgmᵗ discharges the bond for prosⁿ. 1 Root. 259.

A judgmᵗ in favor of the appellant, is final as to the bondsman on the appeal, tho' on a new trial, judgmᵗ is given for the opposite party. 1 Root. 469. So, I suppose if the first judgmᵗ is reversed by writ of Error. 1 Root. 102. 367. 2 Su. 175 6.

The Writ.
Where returnable.

In transitory actions to be tried by Sup.r or C.t Courts the writ is to be made returnable in that C.t in wh. plff. or def.t dwells. St. C. 26. 2 Sw. 191. Kirb. 394.

This rule holds in actions ag.st officers at com. law upon receipts for ex.ns (1 Root. 90-1. St. 384.) But where they are complained of under the St. the suit must be brot to that C.t to whh the ex.n is returnable (So, of orig.l writs). 1 Root. 90. St. 384. post.) tho' it may be in a diff.t C.y before the Sup.r C.t. (Kirb. 113) if either party dwells there. When the title of land is concerned, the writ must be returnable to some Court in that County in wh. the land lies. (St. 26. 2 Sw. 191.

post.

A qui tam action - may be brot in the County in whh the plff or def.t dwells, as in common civil actions. Kirb. 401. Cro. E. 645.

The Writ.

Suits before single magistrates must be prosecuted in the town in which plff or defr dwells except where there is no magistrate in either, who can lawfully try them — then plff may sue before a magistrate in one of the towns next adjoining his own. St. 26.

But a writ of Error shall to the Superior Court must be returnable in that County, in which the judgment complained of was rendered. 1 Root 259) Co of Jurisdiction for new trials 1 Root, 255.

In transitory actions in Eng the venue may be changed, on motion, for reasonable cause not of course and never by plea 1 Bos & Pull 20. 1 Wac. 35. Cal 669 670 1 T.R. 730 3 Bl. 294 Bra. 874

Time of Return.

Writs returnable to C.C.Cs must be returned to the Clerks office on or before the day next preceding the first day of the term. St. C. 25. R.L. 393.

The Writ. Time of Return.

Later returns are, however allowable, if consented to by the parties. So, without consent, under extraord[y] circumstances. As if an accident befalls the officer on his way to the office, or if he is suddenly taken sick, just before the Session. 1 Root. 378.

All writs & writs returnable to Sup[r] Ct must be returned to the Clerk, before the second opening of the Court. 1 Root. 563.

Writs returnable to the County or Sup[r] Ct. must be made returnable to the term next following the date, if there is Sup[r] term intervening. 1 Root 315. 4 Sess. it is error (and I suppose) void as in Eng[d] 3 Wils 341. " Vide 6 T. R.

Process and Service

II. Of Process & Service.

This is of two kinds. Summons & Attachment

(ante.

ante.

1. When the process is a Summons, Service is made by reading the writ in def^ts hearing, or leaving an attested copy (with him or) at the place of his usual abode. 3 T. R. 24 5. 2 Str. 1181. 1 Root. 497.

When husband and wife are sued, one copy is Suff^t. 1 Root. 478.

If the officer makes Service by reading and indorsing Service by reading, the leaving of a copy, which is not true, will not abate the writ. (1 Root. 497.

An acknowledgm^t of Service, indorsed by def^ts attor^y not specially authorized to do it, does not conclude the def^t. He may abate the writ. 1 Root. 466.

Qu. Has it not been decided, that such acknowledgment by def^t himself, does not conclude him &

Process and Service.

Decided that petitions must be served by copy. 2 Sw. 471 (Qu. as to writs of Error. (2 Sw. 277) Lately so decided by Supr. Ct. that Writ of Error may be served by reading. Augt. 1804. Ld. Ct.

On petitions for New Trials & writs of Error, if the deft. lives out of the State, service is made by leaving a copy with his atto. here. (2 Sw. 189.

If a person, residing out of the State, is found within it, a summons served upon him by reading a copy is sufft. to hold him to trial. Semb. (2 Sw. 189.

2. Attachments are, regularly, served by attaching the propy. or body of the deft. (St. C. 24. 2 Sw. 189.

(For the Com. Law relating to Arrests, See "Affs" 2. 4. 3. 1. &c.)

Process & Service.
Attachments.

"Pleas &c.")

But it is well settled, that service by reading or copy is suff^t to hold def^t to trial – not cause of abatement – tho' the officer may be liable to pltff. (1 Root 54. 128. 563. 2 Root. 130. 346. ("Pleas &c." 71.)

The officer has no right to take def^ts body, if he can find personal est^e suff^t to answer the demands, and which he knows to belong to def^t. (2 Sw. 189. Ken. 400. St. C. 34. (Seay at Com^n Law) Secus, if it is not suff^t.

But the officer ought not to be liable to pltff. or def^t. for omitting to take pers^l est^e, if he is doubtful to whom it belongs. Humphrey vs Hibbins C. C. Sep^t 1803.
At Com law, the officer in such case may summon a Jury to ascertain to whom it belongs; if he does not, he takes or omits to take, the prop^y at his peril. 4. Th. 633. 648. 2 H. Bl. 438.

And Defᵗ if no offer, has no cause of complaint for the taking of the body, unless he tenders fees. Process and Service Attachments
Prop. to the officer / K. L. 400.

Decided by Sup. Ct. that the officer having taken defᵗ body, is bound before commitment to accept fees prop. if tendered; and to discharge the body
2 Dev. 190. Sears, Clabb to Defᵗ (K. L. 400.)
in false imprisonment. Ca. at arrests on Penal process.
1 Root. 120. 1 Day. 174. Nº 7. 2. Decided contra
by Ct of E. (1 Root 124) but Holden, that the officer
may do it.
And he cannot hold both property & body K. L. 400.

The defts land is also liable to be taken by attachment;
but the officer is not bound to take land, when he can
find the body — nor, indeed, is he justified, as regards the
Defᵗ in so doing, unless he is so directed by the Plff
2 Dev. 190. K. L. 367.

Process and Service.
Attachments.

An arrest of the body may be made by an offst. of the offr. in his compt. — not out of it — tho' he may be out of sight. (Esp. 604 Bos. & P. 26 reg. Carp. 64.

If property, real or personal is attached, the offr. must leave with the deft. or at his usual place of abode; if within this State, a true copy of the writ, with a description of the propty. attached. St. 34 - s. 2 Law 192

If real estate is attached, the offr. must also leave a like copy &c. at the town clerk's office, within 7 days next after attaching the estate & before the time for serving the writ has expired. Else, it is not holden against any other creditor, or bonâ fide purchaser. Rich. 603. St. 35.

But the omission of this copy will not abate the writ. It is intended merely to give notice to other creditors and purchasers. St. 35. 2 Law 192.

Process and Service
Attachments.

Personal estate attached is not holden to respond the judgmt (either agst the debtor or any other) unless exn is taken out and levied upon it, within 60 days, after final judgmt i.e the lien is lost, except where it is under a prior incumbrance; & then it is not holden, unless exn is taken out and levied, within 60 days, after the incumbrance is removed. St 35. 2 Sw. 189. 190. Rev. 46.

So, the lien on real estate is lost, unless exn is levied upon it, and the levy and appraisal are recorded within 4 mos of it. except in the case of a prior incumbrance, in which case the proceedings must be completed within 4 months after the incumbrance removed. St. 35. 2 Sw. 190.

If pers. propy of suffce to satisfy the exn has been seized on exn the plff cannot have a new exn nor (semble) levy on the judgmt. Bac. Ab. Ex. D. pp. 355. Sal. 323. 2. Mod. 244.

Process and Service. Attachments.

Lately decided, that officer cannot attach real estate without entering upon it. (S. Ct. N. Haven Cot. July 1803.

If a person is in custody of an officer under an arrest in one cause, delivering to the officer an attachment agst the same person, for another cause is a good arrest. (Esp. Cas. 5 Co. 89

When personal chattels are attached, the officer regularly takes them into his custody, & holds them for the purpose of levying ex.n upon them. 2 Bl. R. 1218. But he can retain them for this purpose no longer than till 60 days after final judgm.t 2 Sw. 189. St. 35.

ante f. 3) ante) within that time ex.n must be levied, or the lien is lost.

The officer may however frequently deliver the propt to a "receipts man" viz to some individual who gives a receipt for the property & promises to redeliver it to the officer, at a time certain, or on demand. Kirb. 40. 2 Sw. 189. 190. St. C. 386.

But the officer takes the receipt at his own risk. 1 Root. 153. He is not obliged to do it in any case. Same practice on exs. 1 Root. 92.

The receipts man is not bound by a promise to deliver the propt after the expiration of 60 days from final judgmt and if he promises to deliver on demand, he is not liable, unless demand be made within 60 days &. except in both cases where the goods are under a prior incumbrance, in this case the trust remains till the expiration of 60 days, after the incumbrance is removed. 2 Sw. 190. Kirb. 40. 1 Root 481.

Process and Service Attachments.

If there the promise is to redeliver on demand, & no demand is made within 60 days &c. the receiptsman is bound to deliver the Propt. back to deft; & on refusal, is liable to him in trover. (Kirb. 40-1. 1 Root. 481.

In an action on Jack receipt, it is not necessy for the offr to aver in the declaration, that the judgm or exn remains unsatisfied. (1 Root. 92.

Visible propt within the State, tho' belonging to a person out of the State may be attached, & the attachm of it will hold the owner to trial. 1 Root. 447. Even if the Plff also lives out of the State. In the last case must not the action be laid in the Co in which the propt is? 1 Root. 447.

So, invisible propt &, debts due to a debtor out of the State may be attached. Ch. C. 137. 139. 2 Dw. 189.

If visible prop^{y} belonging to an absent or ab- Process & Service
sconding debtor is not exposed to view, service is made
by leaving a copy of the attachment, with the att^{g}
agent, factor or bailee, in whose hands the prop^{y} is
And this service alone is effect^{l} unless the absent debtor
is an inhabitant of this State, or has dwelt in it; in
which case a copy must also be left at his last or usual
abode in the State (St. 135. Rev. 4. 1 Root. 387

Same rule where invisible prop^{y} as debts due the absent
debtor is attached. (St. C. 139. 1 Root. 387

But in all cases where the def^{t} is out of the State
at the time of the action commenced, & does not return
before the first day of the term, the cause must be
continued to the next term, & if at the second term the
def^{t} does not appear by himself or att^{g} & it appears
probable, that he has had no notice of the suit, the
Ct may continue the action to the term next following
& no longer. At which term if he does not appear,
Judgm^{t} is to be rendered by default. (St. Co. 25. Kirby
393. 4.

Process & Service

But in all such cases ex^tion is stayed till Pltff lodges with the clerk a Bond, in double the amount recovered & with one or more Sureties to refund to the deft what he may recover of the Pltff by reversing or annulling the Judgm^t by Writ of Err^r or within 12 mo after entering up the first Judgm^t. St. Ca 25 1 Rev. 335-6.

If no Bond is lodged, the Judgm^t is erroneous 2 Rev. 267 1 Root. 176.

One decided, that the Judgm^t was void. Decision since denied 1 Rev. 335-6. 1 Root. 176.

The Stat. provides that real estate taken upon such ex^tion shall not be aliened, till after the expiration of the 12 months or after a new trial had on a Writ of Err^r within 12 months. St. C. 25.

Process and Service

By a late Act if action is brot ags a dft out of the State (ut ante) before a single magistrate, & there is no appearance for the dft the action shall be adjudged for a term not less than 3 months & not exceeding 9 months "& there without special matter alleged &c. the action shall come to trial". St. C. 470.

If judgt is rendered by the magistrate ags the absent debtor, the fa. fa. ags the garnishee is to be signed by the magistrate who rendered the orig judgt unless he is removed by death or otherwise before the fa. fa. is sued out; in which case it may be signed by another magistrate. (St 470.

And where the demand in the Fa fa does not exceed 15 dolls. it must be made returnable before the magistrate who rendered the orig judgt — or, if he is dead or removed (ut supra) before another magistrate. But if the demand exceeds 15 dolls. it must be made returnable to the Co Ct in that County in which the Plff or dft in the fa. fa. dwells St. 470.

Miscellaneous Rules

In actions on joint securities or cont.ts if all the defts are not inhabitants of this State, Service upon such of them as are, is Saffe to hold them all to trial. In this case the Suit is not continued of course, but if any of the defts out of the State are aggrieved by the Judgmt, they may be relieved by and, qu. Mx St. 25-6.

But if one of the defts tho' out of the State, is an inhabitant of it, so that Service upon him (by leaving a copy at the place of his last usual abode, is necessy St. 25. 138. Kirb. 4.) the cause must be continued one term, at least. (ut ante J. S.) For, in this case the Stat does not give relief by and. qu. (St. 25-6.) If not cont.d Judgmt is erroneous. (Ld Ct. Middlesex & Ct. on Writ of Error. If the deft is under the care of a conservator, the latter should be cited to appear; but if he is not cited, the suit does not abate, but time is allowed to cite him. Kirb. 174. Post

Post

The officer may not break the outer door or window of deft's house to arrest his body, or take his prop'y. Secus, of inner door. Cowp. 1. 5 Co. 93. 2 Bac. 367. Kirb. 383. Hob. 62. Esp. 604-5. Deft. may be discharged by the Court. – Tresp. 2 2. Shriffs, 9–11.

Arrest on Sunday void, by St. 29 Car. 2. Voar own. So, by our St. service of any civil process. Esp. 605. St. C. 370–2. Bl. K. 823. "Shffs" 2. 2 3 East. 155. (Shffs"

But one's house is privileged only for himself, his family & his own goods. If any other person, or another's goods are in it; the outer door &c. may after request be broken to arrest him or attach his goods. (5 Co. 92. a. Cro. C. 544.

When a person under an illegal arrest at the suit of one, is fairly served with process at the suit of another; the latter service is good. Secus, if any collusion. 2 Bl. R. ~~880~~ 823. Esp. 605. (See "Sheriffs" 2. 2.3.) "Shffs"

Deputy Sheff cannot serve process for or upon, the Sheff for he acts for the Sheff & under his authority in either case. But the Sheff may serve for, or upon his deputy. Beebe vs. Phelps C.P.C. Sept. 1802 (Cante Se 3 Bac. 238.

(ante)

So doubtless, one Deputy may serve for or upon another

(ante)

ante

When towns, societies, proprietors, or other communities are to be sued, service is made by leaving a copy, with the clerk or either of the selectmen or committee-men. St. C. 116.

In Eng. a prisoner in custody for an offence, cannot be served with civil process, without leave of the Ct. or one of the Judges. (4 T.R. 317. 1 H.B.L. 129. Dunn' Conn.

Time of making Service.

In Suits brot to Sup. Ct. or C.P. the time of legal notice in ordinary cases is 12 days i.e. the process must be served on Deft. 12 days inclusive before the day of the CB Sitting. In Suits before Single magistrate, 6 days inclusive. St. 24 & Ed. 188.

But in suits agst towns, societies, provinces & other communities, the Court before a single magistrate service must be made 12 days before the day of the Court's sitting. 1 St. C. 116. 1 Root 109. 2 Sw 188 9.

And a suit by foreign attachment before, whatever Court returnable, must be served by leaving a copy with garnishee and as he can have it at the place of the def's last usual place of abode ante 14 days at least, before the sitting of the Court. 1 St. C. 138. 2 Sw 189. (ante)

So, in suits agst officers by not executing a writ, or for not returning it, or for making a false return, the time of legal notice is 14 days. St. 385. 2 Sw 189.

This rule holds I conceive, only in cases of liability under the St. & not in the ordinary cases of suits at Com. Law: ex. on a sheriff's receipt &c. that the latter are cases at law suits &c. 1 Root 20. 1 St. C. 384. ante (note)

Qu. Whether it does not hold as to Suits at Com. Law. —
Judge K informs that the Sub. Ct have consid. the provo. to all Suits agt officers for not executing writs &c that they may have two days to take their own remedy.
In all other cases the day, on which the writ is served is included in the computa. of the time; & that on which the Ct. sits, is excluded.

And if Service is made on the last day allowed for Service, it must be completed before the evening twilight is gone and while there is light enough to enable the officer to read the process.

Qui tam prosecutions brot to recover penalties, are not within the above rule, as to length of notice. They may be brot by forthwith process; i.e. a warrant issued on a written complaint made to a magistrate. 1 Root 426.

If however, they are brot in the form of civil actions (as in many cases they are) the usual notice, in other cases is necessary, I conclude.

A citation, after the writ returned, to def^t conservator, is not within any of the above rules. Suff^t that reasonable notice is given; and if in the opinion of the C^t the notice is too short; the C^t in its discretion, will continue the cause, or postpone the trial. (Kirk 174. (ante

One def^t cannot take advs of a defective service upon his co def^t. (Hunt 497.

Of Bail

Of Bail.

Of two Kinds in Comn. 1. To the Officer 2. Special Bail.

I. When the body of the deft is arrested under ~~an~~ an attachmt it is the duty of the officer to keep him safely, that he may be forth coming in Court — unless he offers to the officer sufficient Bail for his appearance. (2 Hal 290. Fidd 106. This is Bail to the officer.

Petition, no bail is offered, the officer must regularly, commit deft to prison, for safe custody. 3 Bl 290.) But a deft arrested on mesne process, cannot be committed in Comn without a mittimus, signed by a magistrate i.e. a precept, directed to the gaoler, declaring the cause of commitment, and requiring him to receive & keep the deft till released by due order of Law. St 6. 34. "Civil officer" 104. 199. 218. Mittimus necessary because the writ does not order commitment. After commitmt the gaoler acc to our practice, takes bail, if offered. (Judge K.) The bail bond, then taken, assignable, as in other cases. (Post.) 2 Com. K. 3-4.

Post.

But by St 23 H^t 6. in Eng^d & by our St the off^r is bound to accept Aff^ts bail, when offered, & to discharge the def^t (3 Bl. 290. Tidd. 106. St. Ca. 38.) not so at Com. law.

To bail or admit to bail, a person arrested, is to deliver him to the Sheriffs, on their giving Security for his appearance (3 Bl. 290.) & he is authorised to continue in their Sheriffs custody, instead of going to gaol. Ib.

The Aff^s right to arrest the body of def^t on mesne process, is founded on his ultimate right to take it in ex^n — but as the object is only to secure def^ts person, to be taken in ex^n the purpose is answered, in contemplation of law, by putting him in the custody of Aff^s Sheriffs. — a sort of Bailey. (3 Bl. 290.

The Security given is called a Bail bond — the obligors are called Bail. (3 Bl 290. 2 Tu. 190.

Of Bail.

The bail under our St. must consist of "one or more substantial inhabitants of this State;" of suff^t ability to respond the judgment that may be recovered. St. C. 38. – 2 Sw. 190.

The bail-bond is conditioned for the appearance of def^t before the Court to which the writ is returnable. St. 38.-9. 2 Sw. 190. (Check officer 2. 3.)
This bond being given, the def^t must be immediately liberated from arrest. St. C. 39.

Ante

If the officer refuses to accept suff^t bail, when tendered, he is liable to the def^t for false imprisonment. 2 Sw. 191. 5 Bac. 177. So. 1 Root 120. (to ante) if tendered before commitment. Qu. [illegible] false imprisonment. Case lies 1 Bac. 206. 2 Wils. 313. 1 Com. 487. 5 D. 552. Cro. C. 141. or 196.

Of Bail.

If deft. is committed to prison for want of bail, he can be detained, on the attachmt. no longer than 5 days, after the rising of the Ct. in wch &c. If then ext. is not levied upon him within the 5 days, the gaoler must discharge him, on payment of the gaol fees. (1 A. C. 35. 2 Sw. 191. Where the pltff. in ext. is dead, leaving no exr. & his relatives decline, on notice, to take out admn., the deft. may be discharged by the Court from wch. the ext. issued. 1 Bos &c. 176. 11 Barn. 258. &c, in C. I presume.

The officer may, if he pleases, release the deft. without bail, & if he appears or surrenders himself on the exn. the officer is safe. But this proceeding is at the peril of the officer — for having arrested deft. he is bound to have him forthcoming. Otherwise; liable for an escape. (3 Bl. 290. ~~[illegible]~~ 387. Kirb. 209.

Of Bail

But the officer cannot himself become bail: for he cannot give a bond to himself. In an action, therefore, for an escape, a plea by officis that he gave his own bond for appearance, & that he is responsible &c. is no defence. Hirth 209. H. L. 388. See 4 Bac. 462. 5 Co. 89. 3 Bl 290. Doug. 458 or 466.

Any undertaking, otherwise than by bail bond that a defd arrested on mesne process, shall appear &c is void by St. 23. H6 (1 Ro. 418. 7. H. 109. 239.

In Comm. if the offr takes insufft bail; he is liable to the Sheff on non est returned upon the 2d in an action for escape. (St 29 1 Root. 54.
Pleas in Engd. The practice there is, to rule the Sheff first to return the writ, & then to bring in the body. If he does not on the latter rule, to reject bail above; on attachment ipsos ags him to conduct them to Jay debt & costs. 3 Bl. 291. Tidd. 167. 1 Bac. 58. 206. 4 Bac. 461-2. 1 H. Bl. 232. 2 Mod. 180-1. 2 Bl. R. 1206.

Of Bail.

Decided in Conn. that the officer is not liable, if he takes bail apparently suff.t at the time, tho' they should afterwards fail (1 Root. 54. K.L. 388. (post. Secus in Eng.d 3 Wil. 291. Tidd 156.

The bail may at any time, on suspicion of the principal's intending to escape, take his body, wherever he may be found & surrender him to the officer. Has been holden, that they may take him even on Sunday and surrender him afterwards, tho' an orig.l arrest on that day w.d be illegal. (1 Bac. 205. 6. Mod. 231. 7 Ib. 77. 85. 98. L.d R. 706. (post) 3 Sal 148. Esp. 605. 1 Sal. 262. Decided con. 2 Bl. R. 1273. & the case likened to a vol.y escape, in this particular. (5 T.R. 25. My. No. 29. 3. (post) But the officer is not bound to accept a surrender before the return of the writ: it is optional with him. Secus of bail above (post) They may surrender at any time, & officer must accept. (1 East 383. 590. 6 T.R. 753. 7 T.R. 122. 8. Ib. 456. (post (post

Q. Bail.

The Bail have no authority to command assistance, in taking their principal; but they have a right to obtain it, if they can - and their assistants cannot lawfully be resisted.

Decided in Conn. that an officer having made an arrest may by an escape warrant, retake the prisoner in another State. 1 Root 107. (Notes 29. 3.

The Bail bond is negotiable, both in Eng.d & Connect. i.e. to the Plff in the action (Tidd 156-7. 3 Bl. 290-1. 1 Bac. 207. 8 Geo. 4. Ann. K.B. 388. 1 Root. 281.

So that the action on the bond may be brought after assignment in the name of the Plff. 1 Bac. 207. 4 Dr. 462. Van Zyle vs Thrale Sup.r Ct. Nov.r adj.d term, 1798.)

But it is usually brought in Conn. in the officers name.

If Plff accepts an assignm.t of the Bail Bond, he, ipso facto, discharges the officer. Tidd. 156. Sal. 99. 1 Wils. 220.

Of Bail.

If the Bail are Gaff^{t}. the Plff in Com^{n}. is bound to accept an assignment in discharge of the officer at least he cannot recover agᵗ the officer after refusing to accept it. So if they were apparently Gaff^{t}. at the time (ante) 1 Root. 54. Kel. 388. St. C. 39.) But must seek his remedy on the Bail bond.

If then the Plff having refused to accept an assignment of the Bond. sues the officer for an escape, it is a good plea for the latter, that he took Gaff^{t}. Bail, or Bail apparently so (at Gaf^{t}.) & has offered to assign &c. When the case comes upon the question of fact, whether the Bail were Gaff^{t}. &c (1 Root 54. Kel. 388.

Qu. Is it necessᵗ for the officer to plead, that he offered to assign? or is it the Plffs duty to demand it? The St. provides, that "no recovery shall be had agᵗ the officer "unless he shall have taken insufft Bail, or shall refuse "to let the Plff have the Bail Bond" which seems to imply, that it is the Plffs duty to demand it. (St. C. 39.) & that pleading a readiness to assign would be Gaffᵗ. Qu.

Of Bail

If the officer, having recov^d Judgm^t on the Bail-bond, dies; a Sc. fa. by his ex^t is not barred by def^t's paying the original debt & costs. The ex^t may still recover, on the sc. fa. the officer's fees & disbursements. (1 Rast 254.

A def^t cannot be twice holden to Bail for the same cause of action. Tidd. 35. i.e. while a suit is pending on one arrest, def^t cannot be arrested again for same cause: If he is, the Court will discharge him. (Tidd. 35-6. Stra. 1209. 1216. Formerly, if Plff. was nonsuited in the first action, he would not afterwards arrest def^t for same cause. Tidd. 36. 2 Mo. 67. 1 Sess, now. Stra 439. 1209 2 Wils 281. But even now, in Eng^d in debt on Judgm^t def^t cannot be arrested, if he was arrested in the orig^l action (Tidd 37. Stra. 782. 1039. 2 Wils. 93. 2 Mo. 756.

Tho' the cond^n of the Bail-Bond is, that if the def^t appear at the time and place &c. yet, his non appearance does not, of course, work a forfeiture of the Bond. For, by the St. the Bail are made liable only "in case of the Princes "Rals obedience, & a return of non est inventus upon the "cap^s". St. C. 39 Rule 209 382. 434. 2 Sw. 174.

If, then, deft is not surrendered in Court; it is plffs duty, if he would subject the bail, to take out exon & to use due diligence to have his body taken. And if deft is surrendered on the exon before non est returned; the bail are saved. Of Bail.

If however, the principal makes avoide (i.e. is not surrendered either in Ct or on the exon) and non est inv. is returned; the bail are liable. St. C. 39. 2 Sw. 174 - Kirb. 382. 434. their liability extends to debt and costs. R.L. 387. The return of non est inv. must be made, I conclude, both as to the person & personal estate not as to real este I suppose. For plff is not obliged to accept real est in discharge, or instead of the body. (ante (ante)

The proper action to be brot on the bail bond appears to be debt thô from the words of the Ste it seems that sci. fa. will lie. (St. 39. R.L. 387. 2 Sw. 173. 175 - Kirb. 386. Ru 1 Root 281. 428-9.

In Engd the action must be brot in that Court in wch the origl action was brot. (8 T.R. 152. 6. Ib. 365. 3 Bur. 1923. 3 Wil. 348. 2 Bl. R. 838. Sears in Conn

Of Bail.

Indeed an actual Surrender of principal upon the ex^t is not recev^d to save the Bail. For it is the duty of the off^r holding the ex^t to make diligent search for him; & if, by the w^t a due diligence, the off^r cannot take him, the Bail are liable. Seas, not liable. 2 Sw 174. R.L. 387. Kirb. 382. 384.

But it has been determined, in a case in which the principal shut himself up in an inner room, & by threats, prevented the officer from taking him, that the Bail were liable. Suff^t avoidance. Kirb 382. 2 Sw. 175.

The return of non est inv^s must be fairly made or the Bail are not liable. If left by artifice, procures such a return to be made, unnecessarily, for the purpose of subjecting the Bail, they are discharged. 2 Sw. 174. R.L. 387. Kirb. 383-4.

Post.

Post.

Of Bail.

Tho' it clearly is not necessary for the offr in order to subject the bail, to delay the return, till the expiration of the 60 days, for the purpose of finding the principal. All that the law requires, is, that he act fairly and reasonably. Kirb. 383-4. 434. R.L. 387 2 Sw. 175.

If the principal dies before non est inv. returned, the bail are saved. "Actus Dei &c" (1 Bac. 216-7. 1 Rol 336. Hutt. 47.

Bail to the pltff then, may be discharged 1st By an actual surrender of deft's body in Ct either by his bail or himself. 1 Bac 218. 1 Rol. 337 R.L. 389. 2 Sw. 175. 2dly By a surrender of his body (or, I suppose, a tender of pltff's persl prop.y) on the ext before non est inv. returned, or by his being in a situation in which he might be taken by the use of due diligence. (2 Sw. 173-5.) or by his death (at sup.a). 3dly (As will be seen hereafter) by deft's procuring and entering special bail. (See 2 Root. 101.) 4thly (Post) By pltff's accepting a plea (without special bail, or the words "in custody" &c. 5. By deft's obtaining final judgmt. (2 Sw. 175 6 post.) 6. Principals bankruptcy. Semb 1 Bos. Post 448.

Of Bail.

A mere appearance in Court without a surrender, & without pleading, does not discharge the bail 2 Sw. 175. Kirb. 434. (Does not a dilatory plea? St. C. 39 ff. 2. infra

If deft. is surrendered in Court it is necessy. for the safety of the bail, that the surrender be entered on the record. For no other than ~~the~~ record evd. is admissible to prove the fact. 2 Sw. 174 Kirb. 18. Hob. 210. Cro. J. 402. 1 Lev. 24 Kay 50. 3 Bulstr. 192.

On such surrender the plff. must move the Ct. that the deft. be taken into the Shff's custody. Otherwise, he may go at large, & the plff. loses the benefit of the arrest. 1 H. L. 3. 91 Qu. Is it not the duty of the Ct. ex off.o to order deft into custody? St. C. 39. ff. (It is not the practice.

If the principal is in custody for a crime, the bail may bring him up by hab. corpus, to surrender him 1 Wils. 218.

When the def't whose body has been attached appears in Court & does not enter Special Bail he must plead, if the Plff requires it, "in custody of the Ct." And if Plff accepts a plea, not containing these words, the def's body is discharged (H. Co. 388.) 2 Sw. 175 Tidd 434 — and, of course the bail. Qu. Does the rule hold, if def't is surrendered in Ct? — The acceptance of the plea is a waiver of Plff's right to hold the body. (2 Root 101

Of Bail.

But if the def't having pleaded "in custody" personally in the orig'l action, he is not obliged, on a new trial's being granted, to plead in custody again. Butler vs. Eagle 2 Day. Of course, he is not obliged, on the new trial, to give Special bail. For this is given merely to prevent his being taken into custody. The def't has answered the law, by surrendering himself at the return of the writ; & on obtaining judgm't he was, of course, released, according to law

Of Bail.

If Pltff accepts, in C.C.P. from a deft whose body has been attached, a plea, not containing the words "in custody" &c. (no Special Bail being given) & the deft. prevails; Pltff can not in Supr. Ct. require the deft. to plead in custody, or give special bail. He has waived that right, by accepting the plea. 2 Root. 101.

Same rule, I conclude, if Pltff had prevailed in C.P.C. and deft. had applied — for there would be the same waiver.

So, I conclude, the same rule would obtain, on a new trial, procured by either party, & whoever prevailed on first trial. (causâ quâ supra

Appearance is the first act of deft in C.P. Tidd. 122 tal 8. In Eng. by St. 12 Geo. I. Pltff may enter a common appearance for deft. (Tidd. 124-6 (ante

(ante

The deft appears regularly either by himself or att.y At C.L. parties could not in general appear by att.y 2 Bl. 29a 2 Root 348 2 Bl. 600 Now, by St. Westm. 2d they may (Tidd. 114 Co. Lit. 128a 121.a 1 Mod. 244. 2 Mod. 83 — Confers aggregate must appear by att.y Tidd. 114. Co. Lit. 66.b Our Supr. Ct. has decided, that an att.y may not appear for a town. Pltff unless appointed by a vote of the town or by an agent authorized by vote to retain an att.y 2 Pet. 4. Pltff by guardian or next friend — deft by guard.n Tidd. 119 &c

Co. Lo. 135 b. "Tit. Husb. & Wife" "Guard^n & Ward &c. Of Bail.
Pltff. cannot appear as att^o. St. 387 Root 258.

II.^dly. Of Special Bail

When a def^t who has been arrested, is brot into C^t by an off^r or surrendered into C^t by his bail, or by his own vol^y act, he may be admitted to special bail; and until he is discharged out of custody. 1 B.L. 288. 3 Bl. 290.) and the bail to the Sh^ff. are, of course, discharged.

This is called in Eng^d "bail above" or "bail to the action" 3 Bl. 290-1. Tidd 156.-

And if not surrendered, he is not allowed to plead, without special bail. (St. C. 39.) if Pltff requires it.

Special Bail

Special bail accd to our Stat. must consist of "sufft sureties" but it is common to accept one Surety (1 H.C. 39) If the Pltff does not acquit the Sureties offered, the Court decides upon their sufficiency, by inquiring of witnesses.

In Comn. special bail is given in open Court only — by the Sureties entering into a recognizce in a Pltff's Sum, that the Defdt shall "abide the final judgmt" 1 H.C. 39 The recognizce is made payable to the Pltff Kirb. 377 — 12. Decided that the party, for whose benefit a recognizce is taken may sue upon it, whether he is consusee or not. Kirb. 378 — In Eqy it may be taken before a Judge or Commissioner out of Ct., 3 Dl. 291 —

If the recognizce is forfeited, the Special Bail are obliged to satisfy the whole judgmt rendered agt their principal.

But it is forfeited no otherwise than by the principal's avoidance & a return of non est inv. on the exn as in case of bail for appearance. (ante) 1 H.C. 39

In Eng[d] the bail are discharged by surrendering the Special Bail principal before the return of the Capias agt themselves. Tidd. 1107-9. 1 Wils. 270. 2 H. Bl. 595. 117. 1 H. Bl. 74. 2 T. R. 396-7. 1 Bac. 214. Bac Ab. 61.

In Eng. an attn of the Ct cannot be Special Bail to prevent maintenance & Champerty. Doug. 450 n. or 4 Burr. 1 Bac Ab. 103. 1 H. Bl. (7th) Keay, in Conn.

In Eng. Bail to the action, i.e. special Bail there, have for the purpose of taking their principal, "a right to go into his house, as much as he has himself" i.e. I. Suppose a right to break his doors. (2 H. Bl. 120.

And they may break and enter the house of a stranger in which he resides, to look for him, the outer door being open. 2 H. Bl. 120. ~~(Contra~~) Qu. Is it necessy. that the outer door be open.

Do not the same rules apply to Bail for appearance.

Special Bail

Qu. Whether special bail, recognized in one State, can take their principal (by virtue of the bail-piece) in another? Decided that they may, by Sup. Ct. in the case of Hoyt vs Waldron; some years since. 2 L. 387. 3 Day. 484. 7 Johns. 5 Esp. 190 n. Also decided in C. an officer having made an arrest, may, by an escape-warrant retake his prisoner in another State. 1 Root. 107. My. No. 29. 3. (ante)

(ante)

For the Nature and Form of a bail-piece see 3 W. 291. 1 Addt. No. 3 & 5.
It is merely an entry or memorandum of the proceedg in letting defdt to Special bail.

Bail may break an outer door, to retake principal 7 Johns.

If Special judgmt is rendered agst defdt. the rule is that the principles be avoided & return'd non est inv. the Special bail are bound to take bail for appearance (ante) to satisfy the whole judgmt debt, or damds and costs. 2 L. 388. 5 C. 39.

(ante

The usual & most proper action ags.t special bail, is a sci. fa. it being founded on matter of record. St. C. 39. 2 Sw. 173 Kirb. 378. Special Bail.

Tho' I suppose, debt may be brot.

On the sci. fa. the judgm.t rendered ags.t the principal, is affirmed ags.t the bail, with additional costs. St. C. 39.

But the sci. fa. or other process on the recogn.e must be served on the bail, within 12 m.o after final judgm.t Suits ags.t bail to the plff. are subject to the same limit.n. St. C. 39. 2 Sw. 175. 2 Root. 380.

Decided that the 12 m.o are calendar m.o not lunar. 2 Root. 380. (General rule of Com.n Law, cont.y. H. L. 252. 2 Bl. 141. 6 T.R. 224. Ch. 143.

Special Bail. The particular day, on wh^h^ judgm^t^ was rend^d^ ag^st^ the principal, may be proved otherwise than by the record. 2 Root. 380–1. For no entry on the record is made, in our practice, of the particular day, on wh^h^ judgm^t^ is rendered; all judgm^ts^ being entered as of the first day of the term.

If special bail is given in C. C^t^ & an appeal taken, the sci. fa. or other process must be served on the bail, within 12 m^o^ after the judgm^t^ rendered in Sup^r^ C^t^. The judgm^t^ in C. C^t^ in such case is not final, within the meaning of the limiting clause in the St. For it is destroyed by the appeal.

(ante) In conseq^e^ of this limit^n^ ex^n^ must be taken out ag^st^ the principal, & non est inv. returned within 12 m^o^ at Sup^r^ C^t^ must be taken out in such season, as that the return may be fairly made (ante) ex. gr. not on the day before the year expires.

Special Bail.

But according to Swift, it may be taken out at any time, wh. will admit of "due diligence to take" the principal. 2 Sw. 175. Cooke vs. Collins. S. C. & Ct. of E. 1809.

Suits on bonds or recognizances for pros.n are not within this limit.n (1 Root. 366. 563. 2 Sw. 170 ante

A recogn.e for the pros.n of an appeal by deft. does not exonerate the special bail. (See ante). In this case both bondsmen are liable (if judgm.t goes agst. deft.) for costs, & the special bail, on the return of non est, for the debt or dam.s also.

Under our St. special bail & bail to the Pltff. may, on judgm.t being recov.d agst. them & before satisfaction, maintain an action agst. their principal. St. 39. ff. 5. K.L. 289. 172.

Special Bail. — And if a bond of indemnity is given they may, doubtless maintain an action upon it, as soon as they become liable, i.e. on the principal's avoidance & a return of non est inv. and before. Quere how it ags. them. See "Covt to save harmless". Note, it is no objn to bail, that they are indemnified by deft or any third person. (Bos. & Pull. 21. 103.) except defts attn in Exq. (ante (ante

If final judgmt is given in favor of deft the special bail are of course discharged as bail to the sheriff would be, if there were no special bail. (2 Sw. 175-6. (ante

And an erroneous judgmt tho' reversed by Writ of Error has the effect of a final judgmt — or rather, is deemed a final Judgt within this rule. Ex. A Judgmt in Sup. Ct for deft reversed in Ct of E. — or a Judgmt in C. Ct for deft & not appealed from, but reversed in S. Ct on Writ of Error. 2 Sw. 175-6. 1 Root. 102. 469. 56. (Seay. in Exq. Ejt. 195.) So, as to Coadsman for pros. in appeal by deft. 1 Root 469.

So, a judgm^t in favor of def^t afterwards set aside, Special Bail by granting a New Trial, is final within the rule (1 Root. 469. 2 Sw. 176.

Same rules extend to bonds for pros^n generally. Semb. (1 Root. 469.) Qu.

Every judgm^t in chief then, rendered for def^t in Sup^r C^t. and every such judgm^t so rendered in the C. C^t or by a single magistrate, & not appealed from, discharges the bail. Semb.

Special bail are also discharged, like bail for appear^e by a surrender of def^ts body (or. I suppl^d of suff^t pers^l prop^ty) on the ex^n before non est inv. returned, or by his being in a situation in wh^h he might be taken, by due diligence or by his death, before such return made. 2 Sw. 173-5. 1 Bac. 216-7. 1 Rol. 336. Hutt. 47. (ante

Special Bail.

Special bail, may be changed, on motion, if the bail have failed or for "other reasonable cause." (1 Root. 575-6. So of bondsmen for pros.n of actions or appeals. (Ib.

Of Defence, and Pleading.

The deft. having appeared, and where it is necessy. having given special bail, or been taken into custody, is to make his defence, whh in Conn. forms the next stage of the proceedings.

In England, the first proceeding, after bail to the action put in is the ~~filling of~~ filing of the declar.n whh may under certain circumstances be done, at any time within a year, after suing out the writ. 3 Bl. 292. 295. 5 T. R. 6. H. Bl. 435. ante

By Defence is meant a denial of the cause of action. (3 Bl. 296. — But Judgt may be rend in several ways, without defence, as well as after defence made.

Default

Default.

1. If deft does not appear at the return of the writ after being three times publicly called in Court, he is said to make Default of appearance & his default is recorded. (Sl. C. 25.

In C. Ct the docket is called on the first day of the term, and if deft does not then appear by himself or att & answer to his cause, on being called, at large, his default is recorded — and Judgt is entered up agt him, unless he appears on or before the 2 day, & moves for a trial — in which case the default is erased on his paying the costs to that time. (Sl. 25.

The plff cannot, therefore, take out ex before a default, till the 3rd day of the term.

Defence & Pleading
Default.

In Sup^r Ct it is not usual to call the docket. Regularly, therefore, judgm^t is not rendered, upon default by that Ct till the cause comes to its turn for trial unless the pltff moves, that the cause may be called.

By a rule of both Courts however, the pltff may, at any time take judgm^t by default notwithstanding an appearance for deft unless deft^s att^o will declare in open Ct that, in his belief, there is a serious defence - & unless he does this the Ct will order a default to be entered. This is to avoid a delay of justice where there is no defence.

After default made, deft is consid^d in Ct for many purposes / 2 Hill. 351. Sal 216. Stra. 46. Kirb. 17. Hob. 433. 435.

Ex. gr. - For the purpose of moving to be heard in damⁿ. - on which motion a hearing is to be had, as to the amount of damⁿ only. (Kirb. 17. / Sw. 96. / Root. 566.

So for the purpose of moving in arrest of judgm^t. L^d K. 1274 R.L. 433. — Defence & Pleading. Default.

But after a default, def^t is not in C^t for the purpose of moving an appeal, unless there has been a hearing in damages. 1 Sw. 96. Kirb. 17. 1 Root. 566. ante — ante

On judgm^t by default, or upon demurrer dam^s. are assessed by the C^t St. 27. K.L. 395. (in Eng^d. by a Jury of inquiry Doug. 301.) & def^t. may always have a hearing in dam^s. before the Court.
But of late a Jury has been dispensed with in certain cases in Eng^d. — as in actions of bills of Exch^ge. (8. T.R. 326. 395. 410. 1 H. Bl. 252. 528. 541. 7 T.R. 473. — 4 Ib. 275. Ch. 194. 1 Bos. & P. 369. Doug. 301.
In Eng^d a default regularly admits nothing more than that plff is entitled to recover something. 3 T.R. 302. Doug. 302. Ch. 195. Bull 278. Tidd. 494. 3 Wils. 155.

Defence & Pleading
Default

On default of pleading, when the dam^s are presumptive, & no hearing in dam^s is moved by deft^s Judgm^t goes agt him, in Covn for the whole sum demanded. Under these circumstances, the deft^s by suffering a default, admits that he is liable, to the amount demanded. (2 L. 215) Ex. Cases of this generally & some cases in cont^e

But if a hearing in dam^s is moved, the default admits, I conceive, nothing more, than that Plff has cause of action — & he must prove, to what amount he has sustained damage (Doe. 3 T. R. 302. Doug 302. So that the default, per se, admits nothing more than Plff's title to recover something, as in Eng^d — tho if no motion is made for a hearing in dam^s judgm^t goes ~~[illegible]~~ for the whole demand, ut supra.

Defence and Pleading
Default

Where the dam^{s} are ascertained, as by a written oblig^{n} for money, the default admits a liability, not to the amount of the demand but for the face of the oblig^{n} exactly so far as it is diminished by indorsements, i.e. where no motion is made for a hearing in dam^{s}. Here the Court ascertain the dam^{s} by inspecting the oblig^{n} and subtracting the indorsements, if any. R.L. 215.

Same rule where dam^{s} are ascertainable by reference to a known standard — as in actions on oblig^{ns} for collateral articles. Here the Ct inquire of the by-standers as to the value of the articles, tho' no motion, at Jud^{t} (R.L. 215) and subtract the indorsements if any.

But if such motion is made after default, the deft may in Court prove payments not indorsed, & denied by pltff. Secus, in Eng^{d}. 2 Tr. 302.

Defence & Pleadings
Default. 2

In Engd. there being no motion for a hearing in damd. but a Jury of Inquiry, the rules wh. regulate the amt. of damd. on a default are somewhat diff. from ours. There, if the damd. are presumptive, a default admits only a cause of action — but on an oblign. for money it admits, that deft. is liable, to the whole amount, deducting the indorsments as in C. 3 T.R. 302.

Nonsuit.

Non-suit:

2. If the pltf after the return of the writ, is guilty of any delays or defaults agst the rules of law, or of the Court he is adjudged not to pursue his action, & becomes nonsuit. 3 Bl. 295-6. Ex. if he omits to procure bonds for pros. when ordered by the Ct. or to give oyer when ordered, of his deed, book, &c.

The pltf may also, voluntarily, suffer a nonsuit, before or after defence made, by permitting himself to be three times publickly called, & not answering. But this must be done before the verdict is delivd. to the Clerk. 1 Salk. 571. Lofft. 273. cases of retraxit. But if the Jury is returned to a 2d or 3d considern. he may become nonsuit before the 2d or 3d verdict delivd to the Clerk. 1 Salk. 571.

In these cases deft on motion has judgt for costs whether Defence and Pleading. he has made defence, or not. Not ruethout motion — Motion — Nonsuit. must be made in the terms in which the nonsuit is suffered. See Hob. 269 as to retraxit.

In Engd it is common for the Judge to order the Pltff to be nonsuit while the cause is on trial, if his declar[n] does not state or he ca[n] does not prove a cause of action.

But the Pltff is not obliged to submit to the order — on being called, he may abide, & then the cause must be tried by the Jury. 1 Sho. 173-6. Case in K.B. of Pltff recovering after nonsuit ordered, & ruethout any evidence.

Defence & Reading
Nonsuit

After a nonsuit suffered under an order of Court Plff. is deemed to be in Court, for the purpose of moving to set it aside as being agst Law. (2 H. Bl. 356.

Nonsuit never ordered in Comm.t

After nonsuit, Plff may sue again for same cause 3 H. 296.

Retraxit

3. Retraxit.

Judgm.t may be rendered agst Plff upon a retraxit, either before or after defence made. 3 Bl. 296.

A retraxit or withdrawing of the Suit is an open and solemn renunciation of it in Ct. 3 H. 296

After a retraxit, Plff. cannot, in Eng. commence a new suit for the same cause (3 Bl 296 / Secus. in Conn.

Defence and Pleading
Retraxit

Plff may withdraw in any stage of the Suit in which he may suffer a nonsuit (Cast p.) not after verdict delivd &c. (ut ante) (1 Roll. 552. 571.) nor after a return of arbitrators, or auditors. (Kirb. 273.) nor after the Court has expressed the Gablanza of a decree in Chy. tho' no bill in Form has passed (Ib.

After retraxit, if the defr must move to have Judgt for costs, or he waives the right, & the motion must be made in the same term, in which the retraxit is entered. (Kirb. 269.) So of nonsuits

If both parties fail to appear at the return of the rent, or being three times publickly called (ante) the entry made, in our practice, is "No appearance" after which the cause is out of Court. No Judgt entered. And the Suit cannot be renewed, without consent of both parties. (Kirb. 361.) If it is, bill & exceptions may be filed and Judgt reversed

(ante)

Defence & Pleading
Retraxit

If both parties, having once appeared, fail afterw^ds to appear on being 3 times publickly called, a discontinuance is entered, and the cause is out of Ct. 1 Root. 439.

Defence is made by the def^ts plea. (3 Bl. 296)
As to the diff^t modes of defence i.e. diff^t kinds of pleas, see "Pleas & Pleading."

Time of making defence or pleading:
By St. 11 Geo. all pleas in abatement in C. Ct. are to be made, heard and determined, before the Jury is impannelled &. (St. 242.) & the issue in every cause joined before that time. (No 12. 2 "Pleas &c." p. 4.

This provision has been found impracticable, & the rule of the Ct now is that they shall be made & tendered only, before the rising of the Ct in the afternoon of 2^d day. ("Pleas & Pleadings")

In Supr. Ct. all origl. pleas in abatemt. must be made & tendered, or delivd to the Clk. by the openg of the Court. P.M. of 2nd day., Root. 564. Defence & Pleading

Pleas in abatement whh go to the merits, as in petns in Chy not within these rules — nor pleas in abatement of Writs of Error. (Kirb. 289

Pleas to the action in Supr. Ct. to be made, accg to the old rule, by the opening of the Ct. in morning of 3d day, where the term is but one weeks, & of the 4th day when the term is longer. 1 Root. 564.

This rule has never been strictly regarded in practice — & since the new organizn of the S. Ct. a rule is made in every term, as to those causes, whh are contd for pleading in vacation. (Post.)

(Post)

Defna & Reading.

Changing and altering pleas.

Under our St. wherein deft supposes, that he has mistaken his plea he shall have liberty to alter it - in wch case the Ct in its discretion, may oblige him to pay costs & plff is to have a reasonable time allowed for making answer to it (St. C. 342) & the Ct exercises a discretion to a certain extent in allowing the alter.n 1 Root, 425.

But after deft has pleaded to issue & judgt has been rendered upon it in any Ct he cannot demur to the declar.n. Ex. Gen.l issue in C. Ct appeal to Sup.r Ct Deft cannot demur in L. Ct So, on appeals from Justices to Cir.t Ct, St. 342. Kirb 89.

But it is a general rule, that the deft on an appeal in the Ct appealed to may change his plea, made in the Ct below, of course, & without costs. Gen.l usage Deft changing, pleads de is the form in this case

He cannot, however, go back in the order of pleas from Defence and Pleading as from a plea to the action, to a dilatory plea. For the latter are waged by pleading to the action: Pleas & Pleadings. Nor can he change a plea of title, in bar of, or affect (ante) (ante)

The rule, however, has been in Supr Ct as to changing in the Ct appld to, the plea made below, that it must be done, by the opening of Ct in the morning of 3d day, the term being one week, & of 4th day, if longer (1 Root 564

This rule never strictly observed, & now dispensed with of course in Supr & Ct as to causes cont by the rule to plead in vacation (ante) (ante

The general rule Supr as to changing in the Ct appealed to the plea made below, depends on usage: If defr chooses to rely, in the Court appealed to on the plea made below, there is no need of pleading it de novo, in the Ct above

Defence & Pleading.
Changing & altering plea.

As to the alter[n] of the plea, under the St. in the Ct in which it was orig[y] made it has been decided, that deft may alter, even after the trial has begun. 1 Root. 75. 404. 434. 2 Ab 406. 2 Sw. 227.
It gives a new trial for misleading, & the St says "whereupon" &c.

A public[n] made in C Ct to a plea in abatement may be altered in S[t] Ct. 1 Root. 301.
But the Ct will not allow deft to alter, in any case, by making a new plea, which is inapplicable to the action. 1 Root. 425.

Deft has been allowed to alter, by pleading to issue, after a dem[r] argued, & the record delivered to the Ct for Judgm[t]. (1 Root 476-7. 2 Sw. 227.

Decided by S. Ct that pleas &[c] in abatem[t] may be altered. 2 Sw. 205.

Issue and Trial:

Issue and Trial.

The issue being closed, the cause comes to trial.

Regularly, matters of law are to be determined by the Ct — matters of fact to be tried by the Jury. St. 26-7.

Questions of law are, however, often involved in issues in fact — especially in the general issue, in our practice. (St. 342.

On the other hand issues in fact may, by agr't of both parties, be closed to be tried by the Ct — not without such agr't. St. 27.

Issues in law are always determined by the Ct. St. 26-7.

Issue and Trial

After a trial begun to the Jury, the Ct will not stop the hearing & continue the cause, without the consent of both parties. 2 Rast. 25. 4.

Our Cts do not, on giving the charge to the Jury, direct them how to find, nor give any opinion upon the Fact or Law. But, if dissatisfied with the verdict, they may in civil cases return the Jury to a 2 & 3 consider^a — not to a 4th. St. Ct. 2 T. L. 396. 425. Hetl. 179. 416.

This may also be done in Eng^d but it is not usual; as the Judge directs the Jury in the first instance. Str. 1182.

After the cause is committed to the Jury, no further agreement or evidence can be heard. V. 58.

The party who takes the affirmative of an issue in Fact and Trial facts, first exhibits his ev^d — & his counsel open & close the argument. (1 Root. 571

After the def^t has entered upon his defence, the Pltff having closed his ev^d it is discretionary in the Judge in Eng^d to let the Pltff into ev^d on a collateral point, not before in controversy, to turn the verdict agt the merits of the principal question or not. 1 East. 634.

On issues in Law, the counsel for the party, taking the exception, opens & closes the argument.

On motions & interlocutory questions, only one counsel can be heard on each side, without leave of the Ct

Jury & Trial. — By R. only one counsel is allowed to argue a cause even on the merits, unless the demand is above $ 30 or the title of land concerned. R. 36. Rule not regarded much in practice

If a person is arbitrarily made deft to prevent his testifying there are two modes, in wch the purpose may be defeated, at the trial. 1st If no evc agt him, the Ct will, on motion expunge his name & permit him to testify. 2. If some slight evc agt him; he may, on motion, be tried first, & on acquittal testify. R. L. 241. 452. Esp. 420. Bull 285. 1 Root 489. 2 Mb. 282. 420.

See over, Bills of Exceptions, Dem "& Evc &c. &c. "Pleas & Pleadg." For Challenges to the Jury see "New Trials" "Arrest of Judgment" &c.

Verdict.

Verdict:

The verdict is the finding of the Jury, on the issue
closed to them. 3 Bl. 377

Regularly, every issue should be found affirmatively
or negatively, on the terms of it — Not safe for the
Jury to say, that they "find for Plff" &c. or "that they
find all the material facts stated." 1 Root. 572.

Yet, if they find, in terms, the substance of the issue,
the verdict is good. See "Arrest of Judgment".

The Court may alter the verdict to make it formal,
where the substance of the issue is found. 1 H. Bl. 78.
K. L. 434-5

Verdict. The constable, who waits upon the Jury, may not be present, while they are deliberating upon the cause. (1 Root. 573.) Qu. Will Judgmt be arrested for this cause?

For diffe. Kinds of Judgmts & their effects see "Pleas and Pleadings." – "Writs of Error."

Damages: (See the Titles of the Several Actions.)

If the Jury give more damages than are demanded; pltff may remit the excess & take Judgmt for the rest. R.L. 434. 232. Esp. 304. 420. 4 Bac. 25-6. 1 Root. 66.

Interest, when recoverable. see "Usury."

As to Severing damages where there are sevl defts. See "Action of Trespass" & of "Asst. & Battery," R.L. 208. 433. Esp. 537. 420.

Costs: Costs.

At Com. law no costs were allowed to either party — but plff when unsuccessful was amerced pro falso clamore — and deft when Judgmt passed agst him, for the unjust detention of plff's right. (1 Bac. 511. 2 Inst 288.

Now, in Engd costs are allowed to prevailing party in most cases by Sevl Stats — the first of whh is that of Gloucester. 6. Ed. 1. (1 Bac. 511.

Costs are regularly allowed in Conn. to the prevailing party in all civil actions, I believe, except in four cases 2 Sw. 268.

1. They are never taxed for plff in error, in the suit in error. See "Writs of Error" st. 161.

2. When Judgmt is arrested for insuffy of the declarn (1 Root. 70. Kirb. 218. 1 Root 572. 2 Sw. 268.

Costs. 3. If the deft. in book-debt fails to exhibit his book-acct. to be offset agst. the plffs, & afterwd. brings an action agst. the plff. to recover the book-debt, which he might have exhibited in the former action, & prevails, he can have no costs, unless he shews to the Court that he had no knowledge of the former suit or was "inevitably hindered" from appearing & exhibiting his account. St. 136. R. L. 131.

4. On appeal from Probate to S. Ct. if judgmt. is dis-affirmed, for mistake of the Judge; no costs. Like Writ of Error, 1 Root. 161. Secus, if the mistake is occasioned by fraud or neglect in appellee.

Our St. provides that in actions of trespass, Assault and Battery, & Trespass on the Case brought before the Supr. or County Court if the damages found, do not amount to 7 dolls.; plff shall recover no more costs than damgs. — unless the title, or inheritance or interest "of lands, or freehold estate is the principal matter "in question. St. 29. 2 Sw. 268 9. 2 Root. 88. 160. Or, unless the deft. shall have appealed to the Cy Ct. or Supr. Ct.; in which case the plff. if recovers judgmt. shall have full costs. (St. 29) "To prevent trivial & vexatious suits. Plea of title not necessy. to the allowce. of full costs. 2 Root. 88. 160.

But this St, I believe, has not been construed to extend to actions on the case founded on contr. (2 Sw. 268-9. **Costs.**

Trover for exn for £ 41. Exn deliv'd to plff after suit bro't, Damages 12/ & full costs allowed. 1 Root. 136. 2 Sw. 289.

Whenever deft appeals from a Judgmt on a plea in abatement, & does not support the plea, in the Court appeal'd to, costs shall be taxed agst him, up to the Judgmt on the plea in abatemt & exn shall issue for them however the cause may finally issue. (St. 22. 2 Sw. 269.) To discourage frivolous exceptions.

After a writ has been abated & amended, if plff obtains final judgmt, he recovers no costs, whh accrued before the amendmt except for writ's duty and offrs fees. (Kirb. 89. 2 Sw. 269. R. L. 391.

Costs.

On appeal from Probate to Sub^n Ct by a minor, the decree being affirmed, costs were taxed agst the minor. (1 Root. 325.) Qu. Should not the costs have been taxed agst the guard^n & "Parent & Child"

On motion in arrest of Judgt if rightly decided is awarded, full costs are taxed on the final judgt. (1 Root. 373.

If in action agst several, one deft obtains a verdict, & the plff prevails agst the others, the former is entitled to costs. But he can have only one atty's fee taxed, and only by application of the Court & upon jcy (1 Root. 486.

If two defts are joined in a suit, in which they cannot be joined, & prevail, costs are taxed for each at full rate. (1 Root. 550. Query, if the defendants were strangers, then there to be but one bill of costs taxed, for both, & travel & attendance for one only.

And if two or more pltffs recover in a suit, only Costs.
one Bill of costs is taxed - and travel Attendance for
one only.

On petition for New Trial, if the respondent is cited
to appear at the term, to which the petition is returned,
& the petition itself is addressed to the Ct at another
term; the respondent is entitled to costs. He is in Ct
under the citation, tho' the petition is not regularly
before it. 2 Root. 31.

In qui tam pros^{n} the deft if acquitted, is entitled to
costs, as in civil actions. 2 Root. 136.

In judgt^{s} by confession, the magistrate can tax costs
only for his own fees, unless there was an antecedent
proceg. — If there was, the fact must appear on
the record, to justify the tax^{n} of any addl costs. —
Root 236. 452 1 Kn. 188. (ante

(ante)

Costs.

Costs are regularly taxed in Ct. by the Junior Judge — tho it is said they may be taxed out of Ct. (Rich. 251.

An judgmt upon plea in abatement costs are taxed in Cr. Ct. only upto the second day of the term. Because the St. provides, that such pleas shall be heard and determined, by that time (ante

(ante)

The Attr. of the prevailing party has a lien upon the costs and may require the officer holding the exn. or the adverse party, not to pay them to his client. Esp. 584. Doug. 226. 2 Bl. R. 826 2 H. Bl. 440. 587.

But this lien is subject to any equitable claim of the adverse party; as to a set off. (1 H. Bl. 24. 128. 247. 657. 6 T. R. 435.

The party amending is to pay costs, at the discretion Costs.
of the Court. St. 22-3 342. (Post) (Post

Ordinary items of costs for Plff — 8 Deft.

For the mode of setting aside Judgt. See "Writs of Error" "New Trials"

As to Executors See tit "Execution." Court may remand or take forfeits &c" or other writs, improvidently issued. (Comyn. 183. 4 Bac. 668.

Of Amendments: Of Amendments

Anciently, at Com. Law, amendments tho' allowed before the record was made up, were regularly not permitted afterwards except in the term, in which the act, recorded took place. 3 Bl. 407. 411. 1 Bac. 89. 8 Co. 156-a 4 Bur. 2567 Laws on Pl. 16.—2.3.

Amendments

And according to the practice, wch commenced about the 13 Edw. 1. & continued a long time, not even the slightest & plainest mistake could regularly be rectified after the record was enrolled & the term passed. (3 Bl. 410. 4 Bac. 2567 Laws on Pl. 17.

At present amendments are more liberally allowed in Eng^d at Com^n Law And where Justice requires it, they are permitted at any time, while the Suit is pending - i.e. before Final Judgt - not afterwards. (3 Bl. 407.

But now, in Eng^d all formal mistakes are in gen^l acided by the Sts of 16 & 17 wch are numerous, the earliest of wch is that of 14 Edw. 3 (3 Bl. 407 & 1 Bac. 90 5. 6. &c. 2 Bac. 1098 Laws on Pl. 16-28.

These Eng^h Sts extend in gen^l to artificial and Amendments.
formal, not substantial defects or mistakes. (1 Bac. 96-7.
101-2. Hobt. 118. Cro. E. 644. 8 Co. 156. 159. a. Ex^s of
formal: False Latin — False Spelling — misnomer &c.
— of substantial, suing ex^r &c. in the debet, want
of a proper Signature &c.

We have two Sts on this Subject. The first provides
that "no writ, pleading, Judgt or proceeding, shall
"be abated, Suspended or removed, reversed for any
"kind of circumstantial errors, mistakes or defects,
"if the reason & the cause may be rightly understood
"by the Ct." (St 22 Ps. 2.

This provision, however, is too general & vague to
admit of any effectual applic^n in practice. — Pleas
in abatem^t & Special demurrers for formal defects
are, probably, as frequent & as successful, as if
no such Sts existed.

Amendments

Our old St also provides, that upon, or plea in abatem.t judgm.t is rendered in favor of deft the plff. shall have liberty to amend his writ, or paym.t of costs to the time of the amendment. Ch. 22.

Grant.

This St. extended to formal defects only. Grant

Decided that a motion to amend under this St. was unnecessy. Kirby 5–6.

By our new Stat enacted in 1794, the General Courts of Law and Eq.y may at any time permit the parties to amend any defect, mistake or informality, in the writ, declara.n, pleadings, or other parts of the record in civil causes, upon paym.t of costs, at the discretion of the Court. Ch. 23. 2 Sw. 227–8. This St. differs from the old in several particulars.

1. Under this St. motion to amend is necessary: it may be granted ex mero motu, under the old. Yelverton

2. Under the old St. the writ only was amendable. Under the new, any part of the record may be.

3. Under the old, no amendment could be made, after Judgt. agt. Plff. or plea in Abatement. Amendments.

Under the new, amendments may be made, at any times by Plff. even before plea made, & by either party, at any time afterwards. (1 Root. 565. 2 Root. 57. 119.

4. On amendment under the old, Plff. was obliged absolutely, to pay the legal costs.

Under the new, the allowce as well as the amount of costs, is holden to be discretionary with the Court. (ante) 1 Root 565. (ante)

The Supr Ct. however, allow the taxable costs agt the party amending, almost universally. The Comn Pleas in Litchfield County, very seldom allow any.

5. Under the old Stat. formal defects only were amendable. (ante (ante)

Amendments. Under the new, every species of defect may be amended, except 1st Where the process is coram non judice, or otherwise void. 2 Sw. 205. Ex. No certificate of duty paid. 2dly Where the amendmt proposed would change the nature of the action. 1 Root. 565. 2. Ib. 198. 274. 492. 3dly Where, tho' the writ &c is not strictly void, the amendmt proposed would not aid it. Ex. Insufft service (Post 2 Sw. 205. (post

(post

Pltff has been allowed to raise the dams demanded. My Rep. 31. Eels vs Clark. N H. Cy Jany 1800. and in Fairfield Cy Augst 1803. S. Ct permitted a declara to be amended, after judgmt upon demurrer that it was insufficient. 2 Wils. 297. See 1 H. Bl. 49. 50. 7. T R. 132. 1 Bos. &c. 309. 2 P W. 300. Mitf 15. Doug 204. 316. 438. Replica amended after verdict. Camp. 407. Str. 641. 8 Mod. 376.

So, genl indebitatus assumpsit changed to special. Eels vs Clark sup. 7. T R. 132.

One of two pltffs permitted to amend, by erasing Amendment
the name of his co-pltff. (1 Root. 86.

Writ of Error, misdescribing the Court below,
amendable, before plea. (1 Root 551. 115. 173.
Writ of Error regularly, not amendable in Eng.
(Note 36. 4) 1 Com. Dig. Pl. 49. Cash. 520. 2 Vac.
202. 209. 5 Mod. 16. Cg. Writ of E. in Comm. is in
form, an original writ, Sears in Eng. (2 Bl. Off. 44. XXI.

After an amendment of the Writ, the deft may
plead in abatement de novo — Dso, as often, as amend-
ments are made. For, from the time of amendment
it is consid. as a new writ (Hobb. 5-6. "Sears" &c. 7.4) ("Plea &c")

But when a party has leave to amend he may amend
at once, all amendable defects.

Amendments

The record of a Justice not amendable on Writ of Error, unless he has some written minutes, by rule to make the amendm.t 1 Root 173.

So, in S. Ct. & Cy. Cts. mistake of the Clerk cannot be amended after the term is past, unless there are written minutes; at Sup.a (1 Root 572 Focus, during the term.

Proceedings in Ch.y are amendable as at Law. 1 Root 472. 2 Jo. 274)

Defendant allowed to amend his plea after trial began to the Jury (2 Root 406)

The Sts of amendts do not extend to criminal Amendments.
prosecutions — not to qui tam Gothwaith Pros^x. See
2 Burr. 1039. 1 Bac. 95-6. Sal 51. Cro. C. 144. Cro. J.
414. 4 T. R. 55

At Com law, no difference as to amendments
between civil and criminal causes. 4 Burr. 2567.
2 Burr 1099.

If the Statement of an extrinsic fact will make the
rent good, it may be amended. H. L. 391.
This, When the defect in the rent is extrinsic, it
may be amended, if a Statement of the truth will
make it good. Ex. Misnomer, misdescription &c.

But, if such Statement will not aid the rent,
it is impossible to amend. Ex. Insuff. Service in
fact, tho' the indorsement imports good Service.—
Here no amendment, ante 2 Sw. 205. (ante
So, of pendency of a former Suit for same cause. H.

Amendments

So. if the return of process is insuff^t upon the face of it, not if insuff^t in fact, the writ may be amended by stating the truth. H. So. 391. 2 Chr. 205.

But when the writ is void, it is impossible, in the nature of the thing, to make it good, by any alter^n Ex. No signature of a magistrate. No certificate of duty paid. Cante
No direction to an officer &c.

In some instances a verdict may be amended by the Ct. Ex. If on a declar^n containing good & bad counts, no ev^e is given on the bad, & the jury find a general verdict for $ 100 it may be amended by the Judge's minute & entered on bad counts only, to which the evidence applied. Bac 361. 1 Bos & Pu. 339.) Secus, if any ev^e was given on the bad counts. H. 362. 2 Thomas 478. There, a venire de novo must issue

So, a mistake by the Clerk, in entering a verdict may be amended. Ev. Is the damages found &c. (Stra. 1197. 1 Bac. 101. Cro. E. 112. Cro. C. 335. Stra. 514. Sal 53.

Amendments.

And a Special verdict may be amended — As where a circumstance, deemed by the Ct material, & clearly proved, is omitted. Stra 513. 515. Raym 134 1 Bac. 101. Sal 47. 48. 4 Co. 52. Cro. C. 144.

But in a criminal case, a verdict whether general or Special, is said not to be amendable Sal 53. 1 Bac. 101. 2 Hawk. 141. Qu. See. 11 Mod. 84. Doug. 362. —

14th Sept. 1815.

Carefully compared with the original.